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EXECUTIVE ORDER # 426

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THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT  
STATE HOUSE BOSTON 02133  
(617) 727-4600

ARGEO PAUL CELLUCCI  
GOVERNOR

JANE SWIFT  
LIEUTENANT GOVERNOR

BY HIS EXCELLENCY  
ARGEO PAUL CELLUCCI  
GOVERNOR  
EXECUTIVE ORDER NO. 426

ESTABLISHING THE GOVERNOR'S SPECIAL COMMISSION  
ON BARRIERS TO HOUSING DEVELOPMENT.

WHEREAS, the supply of housing in the Commonwealth has not kept pace with the demand, resulting in an escalation of housing prices and a shortage of housing supply;

WHEREAS, unnecessarily strict zoning, permitting, septic system standards and other local requirements can, at times, unreasonably deter the development of much needed housing;

WHEREAS, residential development can be further impeded by state building codes and other regulations that pertain to buildings and structures which are overly restrictive, conflicting, duplicative or inconsistently interpreted and enforced by local building and fire prevention officials as well as by local plumbing, gas, electrical and health inspectors;

WHEREAS, regulations and requirements relating to housing development that are unnecessarily restrictive, conflicting, duplicative or inconsistently interpreted and enforced may constitute an unreasonable financial and administrative burden on builders and housing developers without advancing public health, public safety and environmental protection goals;

WHEREAS, such regulations and requirements can frustrate their original purpose to protect housing consumers of the Commonwealth by driving purchase and rental prices of housing upwards, limiting options for safe and desirable housing; and

WHEREAS, the citizens and businesses of the Commonwealth will be better served by eliminating (i) unduly restrictive local zoning and permitting requirements, (ii) overly strict and inconsistent septic system requirements, (iii) conflicting and duplicative building regulations, and (iv) inconsistent interpretation and enforcement of such regulations.

NOW THEREFORE, I, ARGIO PAUL CELLUCCI, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me as Supreme Executive Magistrate, do hereby order as follows:

Section 1. There is hereby established the Governor's Special Commission on Barriers to Housing Development (the "Commission"). The Commission shall systematically review and advise the Governor on which governmental requirements, as interpreted or enforced, impede the development of housing, raise housing production costs and exacerbate the Commonwealth's housing supply shortage. The Commission shall make recommendations to the Governor as to specific legislative, regulatory, policy and operational changes that are required to remove, or otherwise ease, such barriers to residential development so as to create housing that is affordable across a wide range of incomes and available throughout a broad spectrum of the Commonwealth's neighborhoods.

Section 2. The Commission shall consist of no less than thirteen (13) members appointed by the Governor, including a representative of the Executive Offices of Administration and Finance, Housing & Community Development, Environmental Protection, Public Safety, Public Health and of the Massachusetts Housing Finance Agency. The Governor shall appoint the Co-Chairs of the Commission. The remaining members shall have knowledge of and experience in local housing issues or housing development. The members shall serve at the pleasure of the Governor.

Section 3. The Co-Chairs of the Commission shall establish two committees: the Building and Specialty Code Coordinating Committee ("BSCCC") and the Septic System Regulatory Review Committee ("SSRRC") and appoint a chairperson to each such committee. The committees' membership shall be determined at the discretion of the Co-Chairs of the Commission. Each such committee will meet at such times and places as established by its chairperson.

Section 3(a). The BSCCC shall submit a report of its findings and recommendations to the Commission, on such date as set by the Commission. As part of its study, the BSCCC shall:

- Identify duplication in the state administration of the state building code and related regulations and recommend how such administration may be made more efficient and cost-effective with regard to housing development.
- Identify existing state code provisions and related regulations that are inordinately restrictive or burdensome to housing developers and recommend how such restrictions might be eased to facilitate the development of new and affordable houses.
- Assess how local officials interpret the state building code and related regulations and identify, if necessary, what measures are needed to ensure that local officials are accurately, consistently and fairly interpreting the state building code to promote and not impede residential development.

- Identify how zoning requirements may inhibit the development of affordable housing and recommend how municipalities may strike a balance between the desire for minimum lot size requirements and the need to ease those requirements in order to allow for moderate housing options.

Section 3(b). The SCRRC shall submit a report of its findings and recommendations to the Commission, on such date as set by the Commission. As part of its study, the SCRRC shall:

- Identify whether local municipalities have regulations or by-laws relating to Title 5 which governs on-site subsurface sewage systems - that vary from the state's requirements, and if so, whether such variations are justified by sound scientific principles.
- Make such recommendations, if found necessary, to ensure that Title 5 is addressed and enforced on the local level in accord with sound scientific principles so that housing development is not unnecessarily impeded.

Section 4. The Commission shall be responsible for framing and directing the tasks to be undertaken by the committees. In addition to those tasks set forth above, the Commission shall identify and address such additional tasks that must be accomplished in order for the Commission to meet its objective stated in Section 1.

Section 5. The Commission shall meet at such times and places as established by the Co-Chairs. It shall prepare and submit its written report, together with those recommendations and findings of the committees that it adopts, to the Governor by June 30, 2001.

Given at the Executive Chamber in Boston  
this 23 day of January in the year two thousand one.

(Argeo Paul Cellucci)  
Argeo Paul Cellucci, Governor  
Commonwealth of Massachusetts

William Francis Galvin  
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

**Members of the Special Commission on Barriers to Housing**

Jane Wallis Gumble, (Co-Chair)  
Director, Department of Housing & Community Development.  
One Congress St.  
Boston, MA 02114

Gary Ruping (Co-Chair)  
President, Ruping Builders, Inc.  
505 Middlesex Turnpike, #11  
Billerica, MA 01821

Stephen P. Crosby, Secretary  
Executive Office for Admin.& Finance  
State House, Room 373  
Boston, MA 02133

Lauren Liss, Commissioner  
Department of Environmental Protection  
1 Winter Street  
Boston, MA 02108

Thomas Rogers, Chief of Inspection  
Board of Building Regulations & Standards  
1 Ashburton Place, Room 1301  
Boston, MA 02108

Howard K. Koh, M.D., Commissioner  
Department of Public Health  
250 Washington St.  
Boston, MA 02108

Thomas Gleason, Executive Director  
MassHousing  
1 Beacon Street  
Boston, MA 02108

Senator Richard Tisei  
State House, Room 313  
Boston, MA 02133

Representative Anthony Verga  
State House, Room 134  
Boston, MA 02133

The Honorable Peter J. Torigian  
Mayor, City of Peabody  
City Hall, 24 Lowell St.  
Peabody, MA 01960

Daniel Webster, Esq.  
Chair, Hanson Board of Selectmen  
Town of Hanson  
542 Liberty Street  
Hanson, MA 02341

Jeanne Pinado, President & Executive Director  
Madison Park Community Development  
2201 Washington Street, Suite 300  
Roxbury, MA 02119

Paul Douglas, Executive Director  
Franklin County Regional Housing & Redevelopment Authority  
P. O. Box 30, 42 Canal Rd.  
Turner Falls, MA 01376

Mark Leff, Sr., Vice President  
Salem Five  
210 Essex Street  
Salem, MA 01970

John C. McBride  
Private Homebuilder  
107 Spencer Brook Rd  
Concord, MA 01742

Richard D. Pedone  
Private Homebuilder  
373 Howard Street  
Northborough, MA 01532

Isabel Barbara Castro, Realtor  
Neighborhood Assistance Corporation of America  
17 Lucey Drive  
Newburyport, Massachusetts 01950

Gregg P. Lisciotti  
Leominster Housing Authority  
24 Walden Court  
Leominster, MA 01453

**Governor's Special Commission on Barriers to Housing Development  
Meeting Minutes  
April 12, 2001  
2:00 PM**

**Commission Members:**

Jane Wallis Gumble	Director, DHCD
Gary Ruping	President, Ruping Builders, Inc.
Stephen Crosby (Absent)	Secretary, Admin & Finance
Lauren Liss	Commissioner, DEP
Thomas Rogers (Absent)	Chief of Inspection, DPS
Howard K. Koh, M.D.	Commissioner, DPH
Steven D. Pierce (Absent)	Executive Director, MHFA
Senator Richard Tisei	Senator, Commonwealth of MA
Representative Anthony Verga	Representative, Commonwealth of MA
The Honorable Peter J. Torigan	Mayor, City of Peabody
Daniel Webster, Esq.	Chair, Hanson Board of Selectmen
Jeanne Pinado	Madison Park Community Development
Paul Douglas	Executive Director, Franklin County
	Housing & Redevelopment Authority.
Mark Leff	Sr. Vice President, Salem Five
John C. McBride	Private Home Builder
Richard D. Pedone	Private Home Builder
Isabel Barbara Castro	Realtor
Gregg P. Lisciotti	Chair, Leominster Housing Authority

**Other Attendees:**

Benjamin Fierro	Lynch & Fierro LLP; Counsel to Mass. Homebuilders Association
Brian Gore	Technical Director, EOPS
Fred Habib	Chief of Staff, DHCD
Glenn S. Haas	Director, Division of Watershed Management, DEP Bureau of Resource Protection
Judith Otto	Director, Office of Community Development & Planning, City of Peabody
Kristen Olsen	Research Assistant, DHCD
Linn Torto	Assistant Secretary, Admin & Finance
Robert Ebersole	Deputy Director, DHCD
Sarah B. Young	Deputy Director of Policy, DHCD
Steve Ryan	Mass. Association of Realtors
Thomas Riley	Program Manager, EOPS Board of Building Regulations and Standards
Tom Gleason	Deputy Director, MHFA
Tony Verga	State Representative

**Distributed Materials:**

- Agenda
- Executive Order No. 426 “Establishing the Governor’s Special Commission on Barriers to Housing Development”
- An Outline of the Existing Research and Recommendation for Reducing the Barriers to Affordable Housing
- Boston Globe Article, “Apartment Developers see Barriers to Building”
- List of the Boards of Health with regulations exceeding Title 5
- An Economic Analysis of the Causes of High Housing Prices in Massachusetts, Commonwealth Research Group, Inc. Dec 1, 2000

**Discussion:**

Ms. Jane Wallis Gumble, Director of the Department of Housing and Community Development, brought the meeting to order and asked both Commission Members and attendees to introduce themselves. Once the introductions were complete, Ms. Gumble reminded Commission Members of the need to be sworn in. She then noted that the limited supply of housing, as evidenced by the fact that the Commonwealth of Massachusetts is ranked #47 in housing starts nationwide, is driving up housing costs and negatively impacting the economy. The Commission has been charged with the task of reducing barriers to housing development in order to increase the housing supply.

Mr. Gary Ruping, President of Ruping Builders, Inc., compared inflation rates in Massachusetts with the national average, and warned that rising housing costs could place MA out of the market.

Ms. Gumble introduced a list of barriers to housing, emphasizing that it is not a comprehensive list, but a starting point for the Commission. The document is titled “An Outline of the Existing Research and Recommendations for Reducing the Barriers to Affordable Housing”. Ms. Sarah B. Young, Deputy Director of Policy for DHCD explained that Ms. Kristen Olsen, Research Assistant for DHCD, developed the document by gathering information from existing research on housing issues in Massachusetts. Ms Young then recommended the Commission review and identify any glaring omissions in the document.

Mr. Thomas Riley, Program Manager for Board Of Building Regulations and Standards (BBRS), informed the Commission that the inability to recreate housing lost to fire in the inner city under the existing zoning and permitting regulations is a barrier to development.

The Honorable Peter Torigan, Mayor of the City of Peabody, stated that in order to successfully reduce barriers to housing, the Commission must include local officials in its work and train them about the need to build affordable housing.



Ms. Gumble noted the correlation of the Commission's task with the Chapter 40B Comprehensive Permit Law. She described how a recent regulation change is helping to notify communities of upcoming Comprehensive Permit Applications and to educate local officials of the need for housing and the benefits of working with developers on Comprehensive Permit Projects.

Mr. Torigan noted that communities always perceive Ch. 40B as the back door to zoning by developers. Ms. Gumble then noted that the converse side of Mr. Torigan's statement is that developers see zoning as the backdoor way to stop development. Ms. Young added that the community planning aspect of Executive Order 418 (EO 418) will help educate communities on the importance of affordable housing and best practices for planning and developing housing.

Mr. Brian Gore, Technical Director for BBRS, noted that while affordable housing is important, the overall housing supply is in need of expansion. Ms. Gumble explained that EO 418 is really about increasing the housing supply because it requires communities to create units in 4 years for certification. She added that \$364 million in state funding is subject to EO 418 certification, and some programs require communities to be EO 418 certified as a threshold requirement for funding.

Mr. Paul Douglas, Executive Director of the Franklin County Housing & Redevelopment Authority, stated that he was interested in learning the degree to which the state can require communities to provide validation of the need of any additional zoning or building regulations. Mr. Ruping noted that many local bylaws are not based on environmental science, but on political science. Ms. Linn Torto noted that EOAF and BBRS will be working with interns to conduct a survey of towns and create an inventory of local bylaws and regulations that exceed state codes.

Mr. Mark Leff, Sr. Vice President of Salem Five, stated that in writing a recent article he found the current methodology for determining educational costs of new growth to be overstated. He also noted that he was supportive of the state's efforts to fill the gap of additional educational costs resulting from new housing.

Mr. Riley stated that the Commission needs to involve somebody from a planning board in its work. Ms. Gumble noted that it would be appropriate to include planning board members as participants in Commission's sub-committees.

Ms. Young noted that the next topic of the outline was building codes.

Mr. Brian Gore, Technical Director of BBRS, stated that many organizations have the authority to develop building codes in MA, and the cost of permitting in MA is unrelated to the services provided to the developer.

Mr. Riley noted two building code problems that commonly occur at the local level: 1) local addition to state building code, and 2) misinterpretation of state building code due

to insufficient funding and educational requirements for regulatory enforcement. He noted that the dilemma of one stop shopping for permitting is that it requires very specialized training to determine when something is built wrong. He added that in order to have one-stop shopping for permitting, you need to have one-stop inspection.

Mr. Torigan commented on the frequent conflicts that develop between Fire Prevention Officials and the Building Commission. Mr. Gore explained that while the Building Commission is the final authority, they are often in conflict with Fire Prevention Officials. Mr. Torigan stated that there is a need for further clarification of the roles and responsibilities of the two groups. Mr. Gore observed that this issue is nationwide and not just a problem in MA.

Ms. Gumble and Mr. Riley agreed that the Commission clearly should include Mr. Steve Coan and some Fire Prevention Officials in the work of the sub-committees.

Ms. Jeanne Pinado, of Madison Park Development, stated that the conflicts between Fire Prevention Officials and the Building Code Commission results in increased costs for developers. A problem that is exacerbated by the costs of meeting unanticipated public utility requirements, she said. She stated that it is important to record the costs developers incur from meeting building codes and public utility requirements.

Ms. Gumble asked the Commission to look at the list of people who may be interested in participating in the sub-committees. Ms. Young suggested that the Commission members to choose the sub-committees that they would like to participate in and then discuss the list of potential participants.

Ms. Pindado noted that other barriers to affordable housing include land and resource limitations and difficulty in accessing tax-title properties. Ms. Young noted that the Commission is charged with focusing on barriers to all housing development, not necessarily affordable housing. She added that the issues of availability of land will be taken up in the debate of the Surplus Land Bill filed by the Administration; and the issue of accessing tax title properties has been addressed in CHAPA's recent publication "Back on the Rolls".

Mr. Ebersole stated that the CHAPA Tax Title report also indicates the lack of training at the local level to deal with these issues as a source of the problem and a potential means of alleviating them.

The Commission members then selected the sub-committees in which they would participate. Each of the three sub-committees gathered in a different part of the room and identified non-Commission members to include in the Commission's work and discussed possible meeting times and dates. The next page contains a list of the Commission members and DHCD staff participating in each sub-committee.

**Sub-Committees:**

- **Building Codes:**  
The Honorable Peter Torigan  
Tom Riley  
Brain Gore  
Sarah B. Young  
Gary Ruping  
Judy Otto
  
- **Permits and Zoning:**  
Mark Leff  
Tom Gleason  
Daniel Webster  
Gregg Lisciotti  
Jeanne Pinado  
Fred Habib
  
- **Title 5:**  
Lauren Liss  
Tony Verga  
Isabel Castro  
Steve Ryan  
Glenn Haas  
Robert Ebersole  
Paul Douglas

**Governor's Special Commission on Barriers to Housing Development**  
**Meeting Minutes (Revised)**  
**June 25, 2001**  
**10:00 AM**

**Commission Members:**

Jane Wallis Gumble	Director, DHCD
Gary Ruping	President, Ruping Builders, Inc.
Stephen Crosby (Absent)	Secretary, Admin & Finance
Lauren Liss (Absent)	Commissioner, DEP
Thomas Rogers (Absent)	Chief of Inspection, DPS
Howard K. Koh, M.D.	Commissioner, DPH
Steven D. Pierce	Executive Director, MHFA
Senator Richard Tisei (Absent)	Senator, Commonwealth of MA
Representative Anthony Verga (Absent)	Representative, Commonwealth of MA
The Honorable Peter J. Torigan (Absent)	Mayor, City of Peabody
Daniel Webster, Esq. (Absent)	Chair, Hanson Board of Selectmen
Jeanne Pinado	Madison Park Community Development
Paul Douglas	Executive Director, Franklin County
	Housing & Redevelopment Authority.
Mark Leff	Sr. Vice President, Salem Five
John C. McBride (Absent)	Private Home Builder
Richard D. Pedone (Absent)	Private Home Builder
Isabel Barbara Castro	Realtor
Gregg P. Lisciotti (Absent)	Chair, Leominster Housing Authority

**Other Attendees:**

Danielle Black	Intern, Administration & Finance/BBRS
Lisa Golbowski	Intern, Administration & Finance/BBRS
Anna Frantz	For Mayor Torigan, City of Peabody
Lou Martin	Director CDBG, DHCD
Kristen Olsen	Research Assistant, DHCD
Brian Gore	Technical Director, BBRS
Thomas Riley	Program Manager, EOPS Board of
	Building Regulations and Standards
Jane Sergi	Planner, DHCD
Linn Torto	Assistant Secretary, Admin & Finance
Robert Ebersole	Deputy Director, DHCD
Sarah B. Young	Deputy Director of Policy, DHCD

**Distributed Materials:**

- Building Code Subcommittee Draft Recommendations
- Draft State Agency Organizational Chart For Building Code Oversight
- Barriers to Housing Zoning Sub-Committee Interim Report
- Barriers Commission Subcommittee on Title 5 Draft Report
- Letter from the Attorney General to cities and towns requesting information to help identify inconsistencies in local zoning and State Building Code

**Discussion:**

Ms. Jane Wallis Gumble brought the meeting to order at 10:00 AM. Ms. Gumble explained that the purpose of the meeting was for each Subcommittee to present a summary of the progress they had made thus far. She explained that the administration had granted a deadline extension, and noted that the Commission should be prepared to submit a preliminary report to Governor Jane Swift in mid September. She then asked each subcommittee to present their respective interim-reports.

Copies of the interim reports prepared by the Title 5 Subcommittee, the Building Code Subcommittee and the Zoning and Permitting Subcommittee were distributed.

**Building Code Subcommittee:**

Ms. Young presented the interim report for the Building Code Subcommittee. She explained that the Building Code Subcommittee includes representatives from the Board of Health, the Fire Chiefs Association, the Homebuilders Association, the Massachusetts Municipal Association (MMA), and DHCD staff. She added that this working group included individuals from the promulgating, regulating and regulated communities.

Ms. Young then discussed each of the Building Code Subcommittee's recommendations. She explained that the Subcommittee's first recommendation is to create a Code Coordinating Council at the state level. This council would be charged with strengthening the lines of communication for code promulgation, addressing overlapping codes, defining roles and limits of authority of the various boards involved in the permitting process, suggesting modifications of the time limits for issuing permits to match developer experience and eliminate conflicts, and developing a guidebook to assist communities in coordinating local boards through the permitting and zoning process. She added that the staffing requirements for the creation of this Council still need to be determined.

Ms. Young then discussed the Building Code Subcommittee's second recommendation which is to offer additional training opportunities, and continuing education requirements for local officials, regulators, and inspectors. She noted that an inventory of existing training needs to be conducted, and costs and funding sources for this training need to be determined.

Ms. Young then discussed the Building Code Subcommittee's third recommendation, which is to recommend staffing requirements for state regulating agencies and local communities commensurate with housing activity and responsibilities to ensure sufficient resources to process applications and inspections efficiently. She noted that part-time staff could be a barrier to housing development, and that the Insurance Services Organization (ISO) tracked information on local staffing levels.

Ms. Young then discussed the Building Code Subcommittee's fourth recommendation, which is to use current technology to make code compliance and enforcement a more user-friendly efficient process. She noted that the Subcommittee specifically recommends providing each community with the computers and software needed to track and do permitting electronically, developing a single website to look-up and key-word search all the codes, and developing the capacity at the Secretary of State's office for electronic public access of information. She added that the costs of computerization and training still needed to be determined.

Ms. Young then noted that MGL c. 802 created a technical code council, but this provision has never been implemented. She explained that from this stemmed the fifth recommendation of the Building Code Subcommittee; to conduct a review of MGL c.802 to determine if revisions are needed to conform to the recommendations of the Commission.

Ms. Young then discussed the sixth recommendation of the Building Code Subcommittee; Conduct a review of all local zoning bylaws to identify communities that are using zoning laws to supersede State Building Code. She noted that The Executive Office of Administration and Finance (ANF) in conjunction with the Board of Building Regulations and Standards (BBRS) and the Attorney General's Office has hired two interns to work on this project. She also distributed a copy of the letter sent by the Attorney General's office to all cities and towns requesting copies of all their local regulations, rules and policies.

Mr. Brian Gore noted that in 1975 MGL c. 802 eliminated any codes competing with state building codes, and provided a means of local adoption of bylaws to meet community-specific alterations through BBRS. He added that in recent years BBRS or the Attorney General's Office has denied about 50 or so applications for local alteration. He also noted that BBRS has designed a database to track all local zoning bylaws, and that staff are currently word searching bylaws to identify those that act like building code.

Ms. Gumble asked what action developers could take when they realize a town's local bylaws are in violation of c. 802.

Mr. Gore explained that developers could submit an appeal to the State Building Code Appeal Committee. He noted that this usually takes about 4-5 weeks, a delay that many developers can't afford, especially since the outcome is uncertain, so they simply comply.

Mr. Gary Ruping added that in his experience, he usually complies with requirements because delays cause added expenses and affect the bottom line.

Ms. Gumble then noted that if people were unaware of c. 802, perhaps it would be appropriate to make more information available on it.

Mr. Thomas Riley added that more often than not, BBRS does not hear of these conflicts in codes. He noted that it would be helpful to have a hotline that developers could call when they run into a code conflict or duplication.

Mr. Steven Pierce asked if a developer had ever successfully appealed a local bylaw acting as building code. Mr. Gore responded that BBRS usually rules in favor of the developer.

Ms. Young noted that the Building Code Subcommittee would be producing a comprehensive report on these issues for the Commission.

Mr. Pierce noted that surveying the towns was a terrific idea, but was concerned about how to deal with the culture of local autonomy in the future.

Ms. Young explained that this concern would be addressed by including local boards and town councils in the trainings to keep them informed of their responsibilities and limits of authority. She then distributed an organizational chart prepared by DHCD staff, that illustrates the relationship between the various code promulgating agencies.

### Zoning Subcommittee:

Next, Ms. Jane Sergi presented the interim report for the Zoning Subcommittee. Ms. Sergi noted that the Zoning Subcommittee has met five times and consists of several developers, planners, and individuals in the real estate community. Ms. Sergi discussed the topics identified by the Zoning Subcommittee as key land-use issues that are factors of zoning barriers. She noted that the group is putting together recommendations and will be voting as to which ones to follow through.

Lou Martin added that there was significant municipal representation in the Zoning subcommittee, and that thus far the discussion had focused on the municipal impacts of housing development, such as education costs. Lou Martin also observed the conflict between Home Rule and the desire/need to produce housing, specifically noting the waste of land that can result from local zoning. Lou Martin stated that another priority of the Zoning Subcommittee is to address the lengthy appeals process which currently delays projects for as long as 5-7 years and add significant costs.

Mr. Gary Ruping noted his experience with the Wetland Appeal Process in Lexington where it was a 12-18 month process to appeal a violation of the Wetland Protection Act and then an additional 3-4 years in the court system. He added that when you go to court with these issues, the decision is not based on concise scientific reasons, and asked if

there was any possibility of routing appeals to the Land Court or the Dept. of Environmental Protection.

Mr. Ruping then asked if the Zoning Subcommittee was addressing zoning that had been adopted in the 50's that were no longer appropriate for today.

Ms. Sergi added that the Zoning Subcommittee was considering recommending expanding the funds affected by EO 418 in order to provide communities additional motivation to review their zoning.

Ms. Jean Pinado suggested possibly requiring consolidated plans or significantly increasing the percentage of money for the Community Preservation Act.

Ms. Sergi noted the need to be aware that planning boards and local staff often have other full-time jobs and don't necessarily have the time to take advantage of the resources available.

Lou Martin noted that the real question is how to encourage greater/better land use with greater density. He also noted that the Massachusetts Municipal Association has created a land-use subcommittee and is very interested in the progress of the Barriers Commission.

#### **Title 5 Subcommittee:**

At this point the discussion turned to the progress of the Title 5 Subcommittee. Mr. Glenn Haas explained that the Title 5 Subcommittee had met about 5-6 times and included individuals from The Massachusetts Homebuilders Association, environmental groups, realtors and health agents. He noted that there are some legitimate reasons to adjust the setbacks, but it is not necessary to adjust Title 5.

Mr. Haas continued to say that the Title 5 Subcommittee had identified some options to consider as possible recommendations to the Governor. He stated that the first option is to require communities to state the reason for alteration or additional requirements to Title 5 and file this with DEP for approval. The second option would be to provide a list of regulations that do not meet the science requirement. The third option would require communities to file Title 5 additions with DEP, but not require DEP approval. A fourth option would be to issue guidance for the scientific requirements.

Mr. Haas explained that a number of issues within Title 5 kept coming up, specifically altering the percolation rate from 30 to 60 minutes. He noted that this would open a large amount of land to development, but would require very good maintenance and installation. He also noted that a shared-system could be used only if it was demonstrated that another Title 5 system could be put in each lot. He explained that this was required in order to avoid a large number of failing or improperly maintained shared septic systems in the future.



Lou Martin questioned the need to go through the process of demonstrating the ability to have individual systems before building a shared system. Mr. Haas explained that this was needed in order to ensure a back-up plan to avoid unsanitary homes in case the shared system failed.

Ms. Pinado suggested developing a carrot and stick approach to housing development and housing plans.

Ms. Gumble asked that the members of the Commission review the draft recommendations submitted and provide comments and feedback at the next scheduled meeting on Tuesday, August 21, at 2:00 PM. She then thanked everyone for all his or her work and adjourned the meeting.

**Governor's Special Commission on Barriers to Housing Development**  
**Meeting Minutes**  
**January 3, 2002**  
**1:30 PM**

**Commission Members:**

Jane Wallis Gumble	Director, DHCD
Gary Ruping	President, Ruping Builders, Inc.
Stephen Crosby (Absent)	Secretary, Admin & Finance
Glen Hass for Lauren Liss	Commissioner, DEP
Thomas Rogers (Absent)	Chief of Inspection, DPS
Howard K. Koh, M.D. (Absent)	Commissioner, DPH
Tom Gleason	Executive Director, MHFA
Senator Richard Tisei (Absent)	Senator, Commonwealth of MA
Lee Moniz for Representative Anthony Verga	Representative, Commonwealth of MA
The Honorable Peter J. Torigan (Absent)	Mayor, City of Peabody
Daniel Webster, Esq. (Absent)	Chair, Hanson Board of Selectmen
Jeanne Pinado	Madison Park Community Development
Paul Douglas	Executive Director, Franklin County
	Housing & Redevelopment Authority.
Mark Leff	Sr. Vice President, Salem Five
John C. McBride	Commons Development Group
Richard D. Pedone	Private Home Builder
Isabel Barbara Castro (Absent)	Realtor
Gregg P. Lisciotti (Absent)	Chair, Leominster Housing Authority

**Other Attendees:**

Jane Santosousso	DHCD
Kristen Olsen	DHCD
Siobhan Coyne	Representative Cahill's Office
Chris Hardy	Massachusetts Audubon Society
Geoff Richeleu	Representative Mary Jane Simmons/ Commission on Local Affairs
	Massachusetts Municipal Association
Matthew Feher	Environmental League of Massachusetts
Pam Dibona	Massachusetts Audubon Society
David Wluka	Lynch & Fierro LLP
Benjamin Fierro	MassInc
Michael Jonas	Department of Fire Services
Steve Rourke	Massachusetts Association of Realtors
Stephen Ryan	Technical Director, Board of Building Regulations and Standards
Brian Gore	Program Manager, EOPS Board of Building Regulations and Standards
Thomas Riley	DHCD
Sarah B. Young	DHCD
Fred Habib	

**Distributed Materials:**

- Written comments on the final draft of the Commission's Report submitted by Mr. John Smolak

**Discussion:**

Mr. Fred Habib brought the meeting to order and asked both Commission members and attendees to introduce themselves. Mr. Habib stated that DHCD had received written comments from Mr. John Smolak regarding the Draft Report of the Governors Special Commission on Barriers to Housing Development. He distributed copies of Mr. Smolak's comments asked Ms. Sarah B. Young discuss the comments with the Commission.

Ms. Young noted that Mr. Smolak's written comments proposed four changes. She discussed each of Mr. Smolak's comments with the Commission. Below are each of Mr. Smolak's comments (*in italics*) and the Commission's discussion of them.

1. *The Smolak Minority Report -- I would suggest that you entitle this minority report as the Second Minority Report, and the minority report prepared by Steve Broderick, et als. should be titled the First Minority Report. I had assistance with the prep. of the minority report I issued but I believe that a more generic labeling of the minority reports would be more appropriate.*

*Ms. Young noted that since the Commission members and subcommittee participants had been referring to these documents as the Broderick Minority Report and the Smolak Minority Report, it could be confusing to change the names completely.*

Based on Mr. Smolak's comments, Ms. Young proposed the following:

- Refer to the Minority Report as The First Minority Report (Broderick Minority Report) in the Commission's report
- Refer to the Smolak Minority Report as the Second Minority Report (Smolak Minority Report) in the Commission's report

The Commission unanimously voted to adopt Ms. Young's proposal.

2. *Pg. 16 [Municipal Cost Burden, IV.1] You should probably delete the sentence regarding the Smolak Minority report because I did not comment on several issues, including this issue, because I was in agreement with the majority report.*

Ms. Young recommended deleting the above referenced statement from the Commission's report.

The Commission unanimously voted to delete the statement.

3. *P. 23 [IV.23. under Recommendation, type and should read C.40A, and not 41A.*

Ms. Young recommended making this correction

The Commission unanimously voted to make this correction.

4. *P. 25 [IV.28. Regional Housing Supply Planning -- I believe this is not quite accurate. I don't believe the Commission agreed that the Commonwealth should employ Cape Cod Commission regulatory tools, but that it should use the resources of the regional planning agencies but not create an additional regulatory/approval layer which would furtherdelay permitting.*

*Lastly, the Zoning Subcommittee did make these recommendations to reduce the barriers to housing development, and I think you may want to include a sentence or two regarding how the Commission feels barriers would be reduced by these proposed changes.*

Mr. Mark Leff noted that at the last meeting, the Commission agreed that they did not want to add layers of regulation. Mr. Stephen Ryan agreed with Mr. Leff and added he did not think that using the Cape Cod Commission as an example in this recommendation was appropriate.

Mr. Pedone proposed striking “such as those of the Cape Cod Commission” from IV.28, and adding “Such tools should not add further regulatory barriers” to the end of the recommendation.

The Commission unanimously voted to adopt these changes.

Mr. Habib then asked if anybody had any other comments on zoning.

Mr. Haas noted that the discussion of the Dissenting Views for recommendations IV.16 and III.2 should include the concerns that DEP lacked the resources need to implement those recommendations that were previously expressed by DEP and ELM. He emphasized that his concern was presenting an accurate record of the discussion that led up to the Commission’s vote on these recommendations.

Mr. Tom Gleason noted that he thought that these concerns were addressed in the recommendations’ language, which noted the need for additional resources.

Ms. Pam Dibona questioned whether the description of the Commission’s vote on recommendation IV.7 was accurate. Ms. Young explained that she did not have a copy of the voting record at the meeting, but would check. (Mr. Haas clarified by email that DEP did not have a dissenting opinion on this item.) That reference will be struck from the report

Mr. Habib asked if anybody had Building Code related comments. There were none.

Mr. Habib asked if anybody had Title 5 related comments.

Mr. Ryan noted that the language of the dissenting views in recommendation III.14 was misleading. Mr. Pedone proposed adding the word “Some” before subcommittee members to clarify that not all subcommittee members shared that concern.

The Commission voted unanimously to adopt this change.

Mr. Habib then asked if anybody had general comments on the report.

Mr. Matthew Feher noted that he thought that due to the scheduling of this meeting so close to the holidays, there was not ample time to review and comment on the report.

Mr. Pedone and Mr. Leff both expressed that they felt the Commission and DHCD staff did an admiral job on this project and in preparing the report.

Ms. Gumble noted that she was proud of the report as it fairly represented the diversity of opinions on all the issues. She noted that in pursuing individual agendas and interests, people tend to overlook the very real housing shortage in Massachusetts and this report will help to address the shortage.

Mr. Ruping noted that this report would show the Governor that there are ways to address the housing shortage.

Mr. Habib then stated that based on the discussion at the meeting it was clear that the Commission had adopted the report.

Ms. Gumble then explained that the word “Draft” would be removed from the report, the changes would be made that were agreed upon at the meeting, and the final report would be posted on the web. This concluded the meeting.

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## Building Code Subcommittee Report

### Process

The Building Code Subcommittee was charged with identifying specific barriers regarding interpretation, enforcement and processes related to the state building code, the specialty codes and local bylaws that act like the building code and to propose recommendations to overcome those barriers. The subcommittee was made up of twenty-one individuals representing interests from state regulatory agencies, municipal government, professional trade and licensing organizations, the State Fire Marshal's Office, the Board of Building Regulations and Standards (BBRS), and local building and fire inspectors. (See Exhibit 1). The Subcommittee met four times to identify and discuss the ways in which the building and specialty codes impacted the various local and state regulators and users. In addition, DHCD representatives who staffed the subcommittee held two focus groups - one was with the Southeastern Massachusetts Building Officials Association and the other one was with the Fire Prevention Association of Massachusetts.

### ***Problem Statement I:*** Conflicting and Duplicative Building Codes

*In October 2000, The Executive Office of Administration and Finance issued a policy report, entitled Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts. In it the authors identified the regulatory environment for residential development as a possible area for improving our ability to preserve and develop much needed housing in the Commonwealth. One key area identified was the promulgation and enforcement of the building and specialty codes in an effort to identify and recommend ways to improve this condition the report states:*

*Many of the codes that regulate building construction, i.e. the State Building Code (780 CMR) and the specialty codes, are independently promulgated by each relevant board and state agency. As a result, the Commonwealth will sometimes put into place regulations that are conflicting or duplicative...*

*As a result, builders trying to comply with the Commonwealth's regulations sometimes face multiple local officials enforcing rules promulgated or inconsistently interpreted by multiple state government jurisdictions.<sup>1</sup>*

The conflict between codes has been a recognized problem for many years. In 1971 the Massachusetts Department of Community Affairs prepared a "Report Relative to the

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<sup>1</sup> *Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts*, Massachusetts Executive Office of Administration and Finance (October 2000), p. 25

## Building Code Subcommittee Report

Development, Administration and Enforcement of a Uniform Building and Housing Code”. The result was the Acts of 1972 Chapter 802, which was signed into law in July 1972. MGL c. 802 established the first Statewide Building Code, and repealed all conflicting local codes in effect prior to January 1975. When MGL 143, §98 was enacted it provided a mechanism for local communities to seek enhanced safety for the community through more stringent construction requirements than those currently established in the building code. (A discussion on local codes is addressed later in this report). In 1984, the legislature further clarified its intent and passed MGL 143, §96, which states:

“The state building code **shall** [emphasis added] incorporate any specialized construction codes, rules or regulations pertaining to building construction, reconstruction, alteration, repair or demolition promulgated by and under the authority of the various boards which have been authorized from time to time by the general court.

The specialized codes referred to in the section shall include, but not be limited to, the state plumbing code, electrical code, architectural barriers regulations, fire safety code, fire prevention regulations and elevator regulations.”

The mandate established by the legislature in 1984 by passing MGL 143, §96 was to incorporate the specialty codes into the state building code and to clarify the jurisdiction and assign responsibility for promulgation of the various codes. The legislature at that time recognized that it would be easier for the state building code to incorporate the specialty codes rather than the specialty codes incorporating the state building code.

Chapter 802 also established a “Technical Code Council” that was charged with the task of recommending revisions to the state building code – specifically excluding the independent specialty codes. These specialty codes include:

- **Plumbing and Gasfitters Code** - 248 CMR  
Promulgated and enforced by the local Plumbing and Gas Inspectors.
- **Sanitary Code** - 105 CMR  
Promulgated and enforced by the Massachusetts Department of Public Health.
- **Fire Prevention and Electrical Codes** - 527 CMR  
Promulgated by the Board of Fire Prevention Regulations and enforced by the fire department and local electrical inspector respectively.
- **Handicap Accessibility Code** - 521 CMR  
Promulgated by the Architectural Access Board and Enforced by the Local Building Official.
- **Drinking Water Regulations – Cross Connections Control** – 310 CMR 22.00  
Promulgated by the Department of Environmental Protection.
- **Elevator Code** – 524 CMR  
Promulgated and Enforced by the Board of Elevator Regulations.
- **Boiler Regulations** – 522 CMR  
Promulgated and Enforced by Board of Boiler Rules.

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## Building Code Subcommittee Report

- **The Department of Telecommunications and Energy**

The chart in Exhibit 2 shows graphically how complicated the structure of the code development and enforcement system is and explains why many local officials, developers, contractors and architects have difficulty navigating their way through the process of new housing development and renovation.

c. 802 of the Acts of 1972 as amended and MGL 143, §93-100 was enacted to create building code uniformity and avoid potential conflict and duplication by incorporating the specialty codes into the state building code. However, the process contemplated by the establishment of the Technical Code Council was not utilized effectively and did not incorporate the specialty codes - the specialty codes are still promulgated separately and independently. The logical resolution is to follow the original legislative directive to have the building code incorporate the specialty codes to eliminate conflict.

Since the inception of the State Building code in 1975, there have been other studies and special reports making recommendations encouraging a more centralized system of code coordination. These reports were produced in 1980 and in 1990, however the recommendations were not implemented. In most local communities one person, usually the building commissioner, is charged with the responsibility of all building code enforcement officials in a city or town. At the same time, other local officials have independent enforcement over their issues affecting building construction. The fire chief has the responsibility to enforce the state fire code. The boards of health and conservation commissions have independent enforcement over their issues. All of these are clearly identified in the state regulations and general laws to ensure the various boards have control over their enforcement. In addition, the groups all report to chief elected political officials or boards in their municipalities. The result being the code promulgation structure varies from the enforcement structure and the enforcement is potentially affected by the agenda of the incumbent political leadership in a community. This enforcement may be further fractionalized when elected boards promote policies that differ from one another.

The Board of Building Regulations and Standards (BBRS) is required by statute to update the State Building Code. The board has begun the process of preparing the 7<sup>th</sup> edition of this code. To accomplish this the board has voted to use the International Code Conference International Building Code model as its standard. This model is an outgrowth of the BOCA National Model building code that has been utilized for the basis of the Massachusetts State Building Code since its original implementation. In addition the Board of Fire Prevention Regulations (BFPR) has recently voted to utilize NFPA 1 to update its regulations. Since the potential for further conflict may exist as a result of the updating of these two documents, it is even more important than ever to create a viable code coordinating council that can identify areas of duplication and conflict and make recommendations to clearly and concisely publish the building code as well as the related specialty codes.



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## Building Code Subcommittee Report

**Recommendation I:** Create a Code Coordinating Council at the state level to coordinate the building and specialty codes, and create a forum for discussing the processes for the promulgation of regulations, licensing, inspections and appeals. Recommend that the Secretary of Administration and Finance will chair this Code Coordinating Council. The Council shall:

- Address areas of overlap in the promulgation of the various codes to prevent conflict and duplication.

In addition, the Code Coordinating Council may also look at areas related to the administration of the building and specialty codes to insure systemic coordination of related procedures such as licensing, inspections and appeals within the required statutory framework. Examples of issues that came up during the subcommittee meetings that would be appropriate to address include:

- Develop a shared understanding of the roles, expectations and limits of authority of the various code promulgating authorities defined by statute.
- Perform a comprehensive analysis of the administrative appeals processes for all promulgating agencies and boards to insure that there is an appeals process across those agencies and boards. Furthermore, that in cases where an efficient and accessible appeals process is unavailable to the public, make specific recommendations regarding the development of such appeals process for the specific board or promulgating agency. Suggest legislation if necessary.
- Review the existing timeframes for permitting and appeals and suggest modifications that logically consider licensing procedures in the building process.
- Establish a guidebook for communities, which present a model protocol to promote the coordination of the permitting, licensing, inspections, and other processes necessary prior to the issuance of certificates of occupancy.

### Proposed Legislation:

#### AN ACT CREATING THE COMMONWEALTH'S CODE COORDINATING COUNCIL

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

Section 1. Chapter 7 is hereby amended by inserting after section 4P thereof, the following section, Section 4Q.

There is hereby established within the Executive Office for Administration and Finance, A Code Coordinating Council.

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## Building Code Subcommittee Report

Said Council shall review the state building code and the various specialized codes of the Commonwealth to coordinate and make recommendations which will eliminate redundancy, minimize inconsistencies and conflicts and maximize the efficiency of the code promulgation process. The Council shall consist of the Secretary or his designee, the State Fire Marshal or his designee, the Commissioner of the Department of Public Safety or his designee, the Chairman of the Board of Fire Prevention Regulations or his designee, the Chairman of the State Board of Electrical Examiners or his designee, the Chairman of the Board of Building Regulations and Standards or his designee, the Chairman of the State Board of Plumbers and Gasfitters or his designee, the Commissioner of the Department of Public Health or his designee, the Chairman of the Architectural Access Board or his designee, the Chairman of the Elevator Board or his designee and the Attorney General or his designee.

The Secretary of the Executive Office for Administration and Finance shall serve as Chairman and will have the exclusive responsibility for the conduct of the Council. The Chairman may employ such technical experts and other assistants as may be required for the Council to perform its duties. The Chairman may from time to time request the advice and input from local officials and other interested parties. The Chairman may promulgate such rules and regulations that govern the conduct of the Council as may be reasonably necessary to effectuate the provisions of this Section.

### ***Problem Statement II:*** Enforcement of Codes

### Inconsistent Interpretation and

Another issue identified in The Executive Office of Administration and Finance's policy report, entitled Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts dealt with the imposition of restrictive requirements of well-intentioned local officials. As has been discussed earlier, the various boards have been charged under state law with promulgating the state building code and the related specialty codes, but it is the responsibility of local officials to interpret, inspect and enforce these codes. It is not surprising that opportunity exists for inconsistent interpretation or misunderstanding of these codes. This can add delays and extra cost to housing construction. The report states:

*Without knowledge of the basis of these regulations, some local officials impose additional requirements that they believe will promote public safety. This lack of understanding by local officials can also result in the misinterpretation of state codes. In addition, while most local officials are skilled at identifying code violations after a building has been constructed, some officials are not fully trained in reading architectural and engineering plans and, therefore, cannot effectively identify code violations within those plans.*<sup>2</sup>

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<sup>2</sup> Ibid. p. 26

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## Building Code Subcommittee Report

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The current organizational structure for the promulgation and enforcement of the Commonwealth's building codes and specialty codes allows for varied certification requirements and training for inspectors. For example BBRS requires certification for local building inspectors along with continuing education to maintain the certification whereas other inspectors, health agents, as an example have no standard certification or education requirements. Clearly, certification and a structured methodology for maintaining certification over a given period of time is an effective way of insuring there are appropriately trained inspectors at the local level. While there has been a concerted effort to increase certification requirements for other inspectors in the specialty fields including action in the areas of plumbers and gas fitters and electricians certification for all inspectors has not been achieved.

The committee determined that there is a need for continued and expanded training for inspectors and the initiation of cross training across disciplines. The various agencies responsible for code promulgation and enforcement do provide ongoing training, however, continuing education is not yet mandatory for all local officials who are charged with regulatory enforcement. Since most training is provided by the individual agencies responsible specific to their areas responsibility there is very little cross training of disciplines. This need for cross training was pointed out both by members of the subcommittee and through feedback gleaned from focus groups from the Southeastern Massachusetts Building Officials Association and the Fire Prevention Association of Massachusetts. In the codes there are gray areas that require the interaction of the various inspectors. For instance, the installation of a boiler can often require the expertise of the plumbing, electrical and fire inspectors. Fire sprinkler installation is another area where cross training of responsible parties could not only increase understanding of requirements but also facilitate faster approval through the preconstruction phase.

A second tier of training that would be helpful in decreasing the approval time for design plans is code training for architects and engineers. Through meetings with local building and fire officials it was determined that some professionals as well as contractors are not proficient in the current Massachusetts regulatory requirements. This lack of proficiency can ultimately translate into problems where plans are not in conformance with these Massachusetts requirements. While architects and engineers are licensed professionals, there are no continuing education requirements to maintain their status. However, continuing education could be included and negotiated with their respective professional organizations for them to maintain their good standing. Should there be a coordinated education program developed, curriculum could be developed to assist contractors and developers with compliance issues and best practices to facilitate the approval process.

In order to facilitate multi-discipline training there needs to be a dedicated funding source that can insure that the courses that are offered are provided on a regional basis, are given with appropriate frequency, effectively administered, and meet the needs of the construction/regulators population. Currently, the state agencies that provide training provide this service through their operating budgets. A potential revenue stream that could provide adequate funding to administer a comprehensive training program would

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be to dedicate a percentage of each permit fee collected. This percentage would need to be established based upon the final estimated costs for a comprehensive training program. Unlike building officials, fire officials collect little or no fee by statute (capped at \$10) to rely upon as a source of training funding. Fire officials would need either appropriation from the legislature or a portion of the building permit fee.

**Recommendation II:** Require minimum training and continuing education requirements for local officials, regulators, design professionals and practitioners.

- Offer joint training for overlapping topics and topics that are often sources of conflict or confusion.
- Offer separate and specific training for inspectors, promulgation officials, developers, architects, builders and other affected trades.
- Establish minimum and continued educational requirements for inspector certification and professional licensure. Note: The Fire Training Council does all fire certification pursuant to statute.
- Standardize the term of certification. Note: The Fire Training Council does all fire certification pursuant to statute.
- Establish a dedicated funding stream to pay for this training and education.

**Problem Statement III:** *Technology has not been adequately utilized to support building code and specialty codes compliance and administration.*

The various codes in the Commonwealth are not consistently available on the web and code related sites are maintained on the independent state agency home pages. This lack of coordination can be burdensome to both, the building professionals as well as contractors and developers. Each code should be digitized and be available on line. All code related information should be centrally located on a single state web site with appropriate links to other pertinent information. This site should also include links the boards that agencies that promulgate the codes and to municipal web sites that include local officials information.

Computerization and standard permitting was discussed by the subcommittees and while soliciting the feedback from local building and fire officials. Local officials did not believe that a single standard permit, provided by the state would shorten the length of time in the construction process significantly to warrant the creation of this form. However, the contractors and developers did indicate a desire to have a standard permitting form, since they work in multiple municipalities and see variation between these forms. State regulations do insure that all permits issued in the Commonwealth require the same information but not in standard format. In addition, there was some interest for allowing contractors to fill out permits on line. This is not available in most municipalities at this time and would require dedication of sufficient technological resources at the municipal level to provide this service.

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## Building Code Subcommittee Report

If a revenue stream were to be provided by a percentage of all permits issued in the commonwealth for training or other purposes, then an adequate tracking system would have to be devised. Many other states are currently tracking permits statewide and this tracking software is already commercially available. However, all municipalities would need to have, or be provided a personal computer to maintain this permit-tracking database. Such a database would provide details of all types permits being issued and could also be use to planners in anticipating needs and impacts that directly relate to construction and land use.

**Recommendation III:** Use current technology to make code compliance and enforcement a more user-friendly efficient process.

- Provide every community with equipment and software for computerized permitting and tracking.
- Develop a single website with all the state codes and the capacity to keyword search all of them.
- Develop the capacity at Secretary of States office for electronic public access of information.

**Problem Statement IV:** *Inadequate staffing at the local level.*

In order to get an understanding of the problems faced by local officials, we conducted two focus groups. One was with the Southeastern Massachusetts Building Officials Association and the other one was with the Fire Prevention Association of Massachusetts. We distributed a survey (see Exhibit 3) that asked a variety of questions related to what problems they encountered with their role of interpreting, inspecting and enforcing the building and specialty codes. In addition to the desire for more training and education as discussed above, many inspectors complained of inadequate staffing to perform the multitude of tasks for which they are responsible. Some officials noted that MGLs required the building official to be responsible for administrative duties that they felt were irrelevant, such as: deed research to determine if a proposed building site is former railroad land; verification that applicants have worker's compensation; insuring proper disposal of debris; and determination that a project does not interfere with airport approaches.

This lack of staffing capacity is exacerbated in good economic times when building activity increases, making it difficult for local officials to perform their jobs efficiently. And it is even more difficult for part time officials to perform all their duties and it makes coordination with other departments more difficult and time consuming. Building department officials noted that they are the only group required by statute to issue a building permit within 30 days, and that other departments either had no time limitation or differing timetables and felt that all other regulating departments (e.g., Fire Department, DPW, DEP, etc.) should be put on a timetable that fits within theirs. The issue of an appropriate time frame for the overall process should be considered by the code coordinating council.

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## Building Code Subcommittee Report

**Recommendation IV:** Recommend staffing requirements for state regulating agencies and local communities commensurate with housing activity and responsibilities to ensure sufficient resources to process applications and inspections efficiently. Consider the staffing levels recommended by the Insurance Services Organization (ISO). Recommend a process for continually monitoring manpower requirements for proper code enforcement at the state and local level. It was also recommended that the money collected by towns from building fees be dedicated to funding local officials' departments/staff, or be passed along to the general fund where it would be used to fund the training of local officials.

**Problem Statement V:** *Inadequate staffing at the state level.*

At the state level, it was noted that there are advantages to having a regional state presence in order to provide technical assistance to local officials and to expedite appeals. Currently there are 15 fire districts and 5 building districts in the state. It was suggested that it would be beneficial to align these districts. The group discussed the fact that additional building inspectors, fire inspectors and engineers, electrical investigators, and plumbing investigators should be added to provide regional capacity in expediting code interpretation and appeals.

**Recommendation V:** The Department of Public Safety in conjunction with the Department of Fire Services shall establish six (6) Regional Code Support Centers.

*The Objectives of the Centers are:*

- To provide a regional resource for local officials for technical assistance on State Building Code and specialty codes as they relate to specific projects within the region.
- To provide a regional presence, for the support of local municipalities in the event on an emergency situation occurring within the region.
- To provide a source for initial mediation of construction or design issues prior to the formal filing of an appeal with the appropriate appeals board.
- To develop and deliver regional joint training of local officials who enforce state codes.
- To provide regional reference document resource for local officials.
- Align Building and Fire Districts within state for unified approach on code related issues.
- It is recommended that each Regional Code Support Center be staffed with appropriate personnel from the appropriate state regulatory agencies to provide services.

These recommendations are subject to funding for appropriate staffing levels.

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## Building Code Subcommittee Report

**Problem Statement VI:** *Local requirements are imposed that are beyond a municipality's authority.*

In the Executive Office of Administration and Finance policy report, entitled Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts, the authors determined that one set of impediments to building construction arises from “*formally imposed requirements that are beyond a municipality's authority*”<sup>3</sup>. This statement reflects Chapter 802 of the Acts of 1972 as amended which repealed all conflicting local building codes and gave authority to write a State Building Code to the Board of Building Regulations and Standards. Conflicting amendments to the State Building Code are not permitted without express permission of the BBRS (MGL c. 143 § 98).

In response to this report, the Office of the Attorney General, the Executive Office of Administration and Finance and the State Board of Building Regulations and Standards undertook a project to attempt to establish the extent to which local municipalities may have inadvertently introduced conflicting building code-like regulations into their local zoning bylaws and other regulations and policies. (Refer to Exhibit 4 for the methodology and the project status.)

Although it is not be possible to definitively quantify all locally conflicting building code like regulations (as many regulations are imposed at the time of special permit applications or plan review meetings), information received to date reveals that many municipalities have incorporated conflicting building code-like language into local zoning bylaws (see Exhibit 5).

The Office of the Attorney General is empowered to review local zoning by-laws for consistency with state law. The Attorney General, upon completing the review, is authorized to approve or disapprove such by-laws within 45 days of its submittal. It is the position of the Attorney General's office that the State Building Code may preempt many local bylaws and has disapproved many local zoning by-laws which have attempted to regulate in ways that conflict with state regulations.

The same review process is not provided for city ordinances, local general by laws, policies, rules and regulations, which, oftentimes are promulgated by well-intentioned boards, commissions or department heads. Such conflicting regulations however cannot result in the creation of local building codes or local municipality amendment to the State Building Code as the sole authority to promulgate a building code for the Commonwealth resides with the BBRS. Because of the lack of oversight many municipality boards, commission and agency heads have indeed, albeit inadvertently, promulgated conflicting building regulations without the legal authority to do so.

**Recommendation VI:** Provide appropriate training for municipal regulators, planning boards and legal counsels in an effort to prevent the creation of conflicting local building codes that represent a barrier to building construction, especially residential

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<sup>3</sup> Ibid. p. 83

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**Building Code Subcommittee Report**

development. In cases where municipalities have adopted conflicting building code-like language in contradiction to c.802 of the Acts of 1972, as amended and/or MGL c.143 §§ 93-100 as applicable, the Attorney General shall submit written notification to communities and work with the subject communities, to rectify the identified legal conflicts.

In order to accomplish this, the investigation and evaluation of conflicting local building code-like requirements must be completed and documented. The Attorney General must review all findings to determine if such local regulations, requirements, policies, conflict with the requirements of c.802 of the Acts of 1972, as amended and/or MGL c.143 §§ 93-100, as applicable.



**Building Code Subcommittee Report****EXHIBIT 1****PARTICIPANTS IN BUILDING CODE SUB-COMMITTEES TO SPECIAL  
COMMISSION ON THE BARRIERS TO HOUSING DEVELOPMENT**

<u>NAME</u>	<u>AFFILIATION</u>
Hon. Peter Torigian	Mayor City of Peabody 24 Lowell Street Peabody, MA 01960
Linn Torto	Assistant Secretary Executive Office of Adm. & Finance State House Room 373
Thomas Riley	Program Manager Executive Office of Public Safety One Ashburton Place, Room 1301 Boston, MA 02108
Brian Gore, P.E.	Technical Director Executive Office of Public Safety One Ashburton Place, Room 1301
Gary Ruping, President	Ruping Builders, Inc. 505 Middlesex Turnpike, #11 Billerica, MA 01821
Judy Otto, Director	Office of Community Development & Planning 24 Lowell Street Peabody, MA 01960
Phil Delorey, Vice-President	Building Inspector 584 Main Street Athol, MA 0133
Steve Houle, President	Building Office of Western, MA Building Commissioner, Town of Ludlow 488 Chapin Street

## Building Code Subcommittee Report

Ludlow, MA 01056

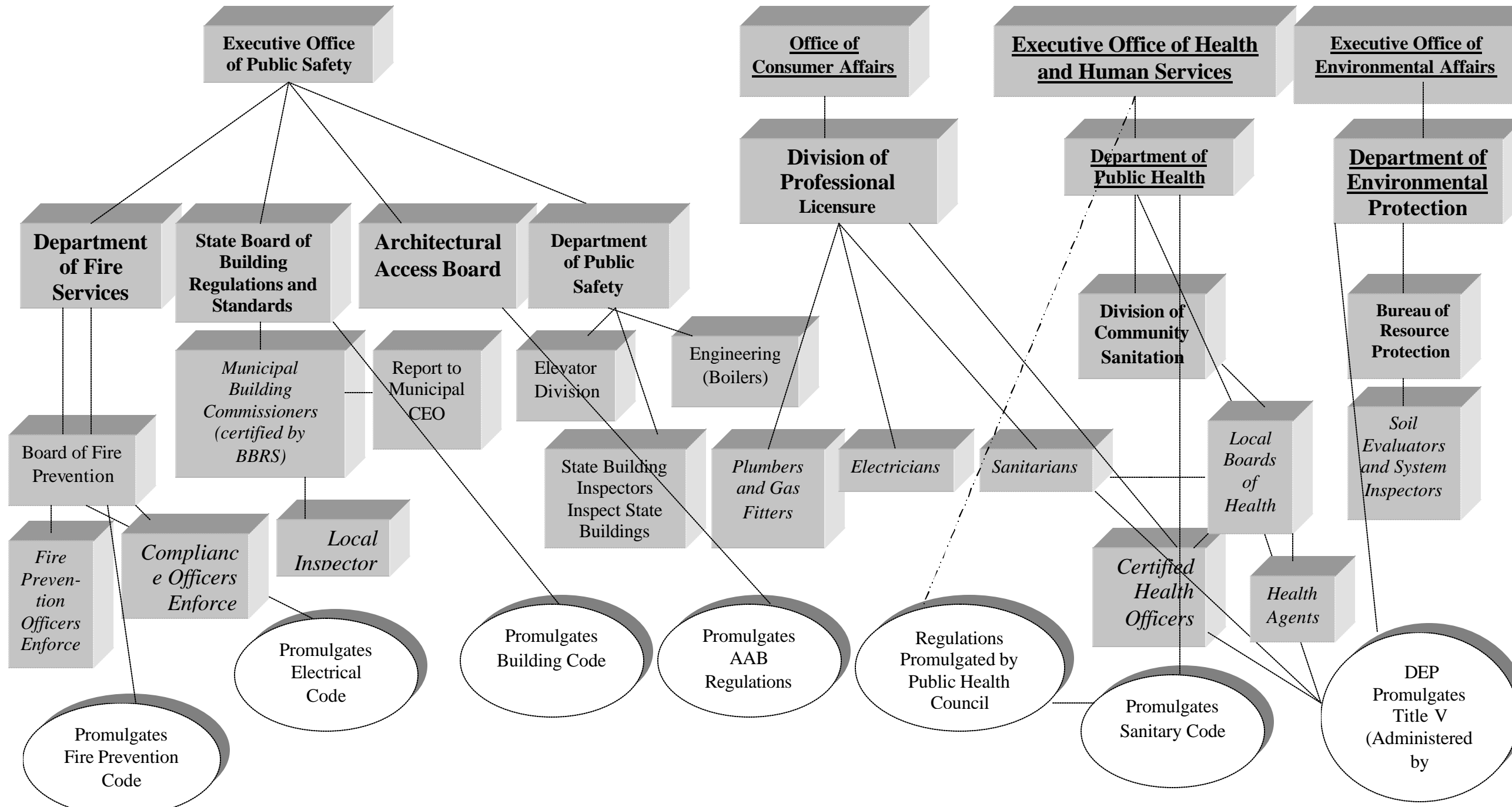
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Charles Dinezio	8 Auburn Street Charlestown, MA 02129
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Vernon Woodworth	The Sullivan Code Group The Boston Society of Architects 343 Commercial Street Boston, MA 02109
Lou Visco, Exec. Director	Division of Professional Licensure 239 Causeway Street Boston, MA 02114
James Fahey	Executive Secretary Board of State Examiners of Electricians 239 Causeway St. Boston, MA 02114
Mike Kass, Esq.	Division of Professional Licensure 239 Causeway Street, 4 <sup>th</sup> Floor Boston, MA 02114
Bob Ritchie	Attorney General's Office One Ashburton Place Boston, MA 02108-1698
Deb Ryan	Architectural Access Board 1 Ashburton Place, Room 1310 Boston, MA 02108

## **Building Code Subcommittee Report**

Howard Wensley	Regulator Department of Public Health 250 Washington St. Boston, MA 02108-4619
Chief Thomas Garrity	Fire Chief's Association of MA 104 McArthur Ave. Devens, MA 01432
Tim Rodrique (for Steve Coan)	Department of Fire Services P. O. Box 1025 State Road Stow, MA 01775
Bill Klauer	The Fire Prevention Association of MA 70 Piper Road Acton, MA 01720
Sarah Young	Deputy Director of Policy DHCD One Congress St., 10 <sup>th</sup> Floor Boston, MA 02114
Robert Shumeyko	DHCD Division of Municipal, CDF Manager One Congress Street, 10 <sup>th</sup> Floor Boston, MA 02114
Robert Danilecki	DHCD Construction Management Unit Construction Architect One Congress Street, 10 <sup>th</sup> Floor Boston, MA 02114

EXHIBIT 2  
Massachusetts Building and Specialty Code Enforcement and Regulatory

Appendix D



**EXHIBIT 3**

**Survey for Fire Prevention Association Meeting  
July 10, 2001**

Is the building community knowledgeable and responsive to the fire prevention requirements for new construction and rehab? If not, how could this be improved?

What suggestions do you have to better coordinate with the other local officials that are responsible for permitting and approvals, i.e. conservation, health, building, etc.?

What types of training would be beneficial for fire officials, other than what is currently provided (e.g. blueprint reading)?

Would joint training with other agency (electrical, building etc?) officials be helpful?

Staffing resources for Fire Officials. Is staffing (lack of administrative support, inspectors, etc.) an issue locally, particularly in high growth communities?

Would standard building permit forms, provided by the state, be helpful?

What suggestions do you have to better coordinate regulations, roles/responsibilities at the state level?

Survey for Southeastern Mass Building Officials Association Meeting

Please take a moment to answer the following questions.

1. How can you better coordinate with the other groups that are responsible for permitting and approvals, i.e. conservation, health, fire protection, etc.?
2. Is there additional training for local building officials, other than those that are currently provided, that would be helpful?
3. Would joint training with other agency (electrical, fire, etc.) officials be helpful?
4. Architectural Access Board requirements. Is there additional assistance (communication, training) needed in the area of accessibility requirements?
5. Staffing resources for Building Officials. Is staffing (lack of administrative support, inspectors, etc.) an issue locally, particularly in high growth communities?
6. Would standard building permit forms, provided by the state, be helpful?
7. Are there roles and responsibilities that are currently being performed by building officials that are, or should be another group's responsibility?
8. Are there other types of assistance that could help you do your job more effectively?

## EXHIBIT 4

### Methodology for the Review of Local Bylaws, Policies & Procedures

The following describes the tasks undertaken to accomplish this Special Project:

- Gathering zoning, general by-laws, policies, procedures from all 351 municipalities of the Commonwealth.
- Analysis of the information for building code like language using, where appropriate, selection of words and word phrases associated with the regulations of the Massachusetts State Building Code. (Refer to Attachment 1 for the list of words and word phrases utilized);
- The development of a Database to manage and to track what kinds of information are received from what municipalities and the identification of what rules, regulations, bylaws, policies, etc., might inadvertently compete with requirements of the State Building Code;
- Review of all city and town zoning bylaws (and general bylaws, when available), relative to the concern of inadvertent building code-like language;
- Review of all city and town regulations, rules, policies, etc., relative to the concern of inadvertent building code-like language;
- Identification, on a town and city basis, specific possible problem zoning bylaws, regulations, rules, policies, etc., to be forwarded to the Office of the Attorney General for assessment of legal standing relative to law creating the State Building Code (refer to Attachment 3 for specific examples of possible problematic zoning bylaws);
- Communication, by the Office of the Attorney General, to applicable cities and towns regarding problematic bylaws, regulations, rules, policies, etc.

The following are examples of words and phrases found in zoning bylaws, which may compete with the requirements of the state building code (alphabetical).

"certificate of occupancy"

"construction type"

"exit"

"fire alarm"

"fire detection system"

"heat detector"

"smoke detector"

"sprinkler"

"swimming pool fence"

"use group"

Complete list of words and word phrases utilized for the zoning bylaw review and which will also be utilized in review of policies, regulations, etc.

Note that those words and word phrases marked with an asterisk (\*) are words and phrases that have, in the past, been identified with zoning bylaw building code-like language that resulted in certain bylaw disapprovals by the Attorney General.

alternative energy	fire alarm*	inspection
affordable housing	fire code*	installation permit
auxiliary system	fire detection system*	issuance of a building permit*
building code*	fire permit	master box*
building permit*	fire prevention code	occupancy permit
certificate of occupancy	fire protection system*	pull station*
construction	flood*	smoke detector*
construction type	foundation*	sprinkler*
egress*	heat detector*	structural
exit	height and area	swimming pool fence*
energy conservation	housing	use group

### **Status the Review of Local Bylaws, Policies & Procedures Project**

- The zoning bylaws of all 351 cities and towns have been screened.
- Additionally, as of the end of August, 189 communities have provided information (for other than zoning bylaws) relative to regulations, rules or policies adopted by local boards and departments that are related to zoning, land use, construction or development, as well as copies of standard conditions, written policies or other relevant documentation in the city or town's regulatory scheme that could have these areas as their focus.
- Of the 162 communities ( $351 - 189 = 162$ ) that have not provided regulations, rules, policies, etc., interns have spoken to city or town agents from 98 of these communities requesting further information as applicable, but 64 ( $162 - 98 = 64$ ) communities have still not responded to phone queries.
- Review and assessment of other than zoning bylaws; i.e., rules, policies, etc. continues.



- Formal documentation of potentially problematic zoning bylaws, regulations, policies, etc., for transmittal to the Office of the Attorney General for possible action, has yet to be done.

## **EXHIBIT 5**

### **Specific examples of possible problematic zoning bylaw language.**

**Certificate of Occupancy** - The Town of W---- bylaw reads: *A new certificate of occupancy shall be required if there are any major structural alterations involving an increase in the total square footage, of greater than twenty-five (25) percent, or substantial variation from the operations referred to in the original Building Permit.*

NOTE THAT CERTIFICATE OF OCCUPANCY REQUIREMENTS ARE SET FORTH IN THE STATE BUILDING CODE, CHAPTER 1, SECTION 120.

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**Construction type** (the word "construction" is actually at issue) - The Town of X--- bylaw, in part, reads: *For all new construction and substantial improvements, fully enclosed areas below the lowest floor...subject to flooding shall be designed to automatically equalize hydrostatic flood forces...*

NOTE THAT FLOOD RESISTANT DESIGN REQUIREMENTS ARE SET FORTH IN THE STATE BUILDING CODE, CHAPTER 31, SECTION 3107 (note also that methods of construction are not to be incorporated into zoning bylaws per MGL c.40A, § 3).

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**Fire alarm** - The Town of G--- bylaw, in part, reads: *All new housing or other buildings that may create a danger to life or property from fire shall be consistent with the town-wide comprehensive fire protection code. The Fire Chief may make recommendations for fire prevention measures including, but not limited to fire ponds, dry hydrants, sprinkler systems, and alarm systems per the National Fire Prevention Association Standards.*

WITH THE EXCEPTION OF CERTAIN MGL c.148 LAWS, ALL FIRE ALARM REQUIREMENTS FOR ALL USE GROUP BUILDINGS, INCLUDING RESIDENTIAL BUILDINGS ARE FOUND IN THE STATE BUILDING CODE, CHAPTER 4, OR CHAPTER 9 OR CHAPTER 34 OR CHAPTER 36, AS APPLICABLE.

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**Exit** - The Town of D-- bylaw, in part, reads: *Every subsidiary apartment shall have two separate exits, one of which may be an emergency fire exit available at all times.*

NOTE THAT REQUIRED MEANS OF EGRESS CRITERIA (which includes requirements for "exits") ARE SET FORTH IN THE STATE BUILDING CODE, IN CHAPTER 4 OR CHAPTER 10 OR CHAPTER 34 OR CHAPTER 36, AS APPLICABLE.

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**Fire detection system** - The Town of H--- bylaw, in part, reads: *Every multifamily development, whether condominium or rental, built after 1984 shall install an automatic fire-*

*detection system in each building...The automatic fire-detection system shall be wired into the fire station...*

WITH THE EXCEPTION OF CERTAIN MGL c.148 LAWS, ALL FIRE DETECTION REQUIREMENTS FOR ALL USE GROUP BUILDINGS, INCLUDING RESIDENTIAL BUILDINGS ARE FOUND IN THE STATE BUILDING CODE, CHAPTER 4, OR CHAPTER 9 OR CHAPTER 34 OR CHAPTER 36, AS APPLICABLE; ADDITIONALLY, THE SUPERVISING OF SUCH SYSTEMS IS ALSO DEFINED VIA CHAPTER 9, SECTION 923.

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**Heat detector** - The Town of B--- bylaw, in part, reads: *The smoke and heat detectors shall be located in the immediate vicinity of, but outside of, all sleeping rooms and in attic space and cellars.*

WITH THE EXCEPTION OF ONE RETROFIT MGL c.148 LAW, THE PLACEMENT OF SMOKE AND HEAT DETECTORS (IF APPLICABLE AT ALL) IS DELINEATED IN THE STATE BUILDING CODE AND ITS DEFAULT REFERENCE STANDARDS. THE STATE BUILDING CODE IN BOTH CHAPTERS 9 AND 36 REQUIRES SMOKE DETECTORS IN ALL BEDROOMS (typically smoke detectors should never be placed in attics as attic ambient temperature swings can exceed the ambient temperature listing of the detector and dust accumulation subjects the device to false alarming - although currently under discussion, heat detectors for one and two-family buildings are not yet required in the State Building Code due to earlier ambient temperature listing issues should such devices be placed either in unheated garages or in unheated attics where ambient temperatures may swing from below zero to well above 150 degrees Fahrenheit thus exceeding traditional device listing temperature requirements).

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**Smoke detector** - The Town of W--- bylaw, in part, reads: *A copy of the sketch of the building, showing location of the smoke detectors...shall be forwarded to the chief of the fire department for review. Said fire chief shall make recommendations, as he deems appropriate...*

THE BUILDING PERMIT APPLICATION PROCESS AND REQUIREMENTS FOR SMOKE DETECTORS ARE SET FORTH IN THE STATE BUILDING CODE - THE BUILDING OFFICIAL CAUSES FORWARDING OF PERMIT APPLICANT FIRE PROTECTION SYSTEM LAYOUT FOR REVIEW TO THE HEAD OF THE FIRE DEPARTMENT BUT THE CRITERIA FOR SMOKE DETECTOR LAYOUT IS NOT THE PURVIEW OF EITHER THE FIRE CHIEF OR THE BUILDING OFFICIAL - SMOKE DETECTOR LOCATION REQUIREMENTS ARE SET FORTH IN THE STATE BUILDING CODE IN CHAPTERS 4 OR 9 OR 34 OR 36 IN CONJUNCTION WITH REQUIREMENTS OF THE APPLICABLE REFERENCE STANDARDS.

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**Sprinkler** - The Town of G--- bylaw, in part, reads: *All new housing or other buildings that may create a danger to life or property from fire shall be consistent with the town-wide comprehensive fire protection code. The Fire Chief may make recommendations for fire*

*prevention measures including, but not limited to fire ponds, dry hydrants, sprinkler systems, and alarm systems per the National Fire Prevention Association Standards.*

("sprinkler", continued from previous page)

WITH THE EXCEPTION OF CERTAIN MGL c.148 LAWS, ALL FIRE SPRINKLER REQUIREMENTS FOR ALL USE GROUP BUILDINGS, INCLUDING RESIDENTIAL BUILDINGS ARE FOUND IN THE STATE BUILDING CODE, CHAPTER 4, OR CHAPTER 9 OR CHAPTER 34 OR CHAPTER 36, AS APPLICABLE (it is not the purview of either the fire chief or building official to unilaterally decide whether sprinklers are required or where they shall be located; such is established by the State Building Code and its default to applicable reference standards).

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**Swimming pool fence** - The Town of A--- bylaw, in part, reads: *Outdoor swimming pools having a capacity of 4,000 gallons or more shall be completely surrounded at all times by a fence or wall not less than four feet in height above grade...*

FENCING REQUIREMENTS FOR SWIMMING POOLS ARE FOUND IN THE STATE BUILDING CODE, CHAPTER 4, SECTION 421.

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**Use group** - The Town of H--- bylaw, in part, reads: *Floors of occupancies in any use group, other than use group R (residential) below the base flood elevation may conform to 780 CMR 3107.5.4 as an alternative.*

NOTE THAT FLOOD RESISTANT DESIGN REQUIREMENTS ARE SET FORTH IN THE STATE BUILDING CODE, CHAPTER 31, SECTION 3107 (when applicable, the requirements of Section 3107 are not optional).



## Fire Chiefs' Association of Massachusetts, Inc.

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Chief Thomas E. Garrity  
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28 September, 2001

Sarah Young, Deputy Director for Policy Development  
Department of Housing and Community Development  
One Congress Street, 10<sup>th</sup> Fl.  
Boston, MA 02114

RE: Minority Report

Dear Ms. Young:

Attached is a minority report developed jointly by the Fire Chiefs Association of Massachusetts and Fire Prevention Association of Massachusetts. The purpose of this report, which is being submitted to the full board, is to address the following points that have been brought out at the subcommittee level but not fully addressed at the full committee.

The major points are:

We are in agreement on the formation of a Code Coordinating Council to streamline the process, however, the approach to date has been on-sided. The adoption of a model building code has lead to many conflicts with the specialized codes. This process had been slanted toward the building code and needs to be uniformly neutral in looking at all codes. Training and staffing are important at all levels, both state and local. This area needs to be addressed completely.

Although we don't disagree with the approach of reviewing by-laws, we believe that this should be a slow and methodical process. There is a substantial amount of legal work that needs to be completed, and should be completed by inexperienced interns. Legal counsel for all code board should complete this process. Further, it is felt that the cities and towns have the legal right through Home Rule authority, to further regulate conditions. These issues have been brought out through the Department of Environmental Protection (DEP), as well.

In conclusion we look forward to the meeting on October 9, 2001 to further express our concerns/options.

Sincerely,

Hobart H. Boswell, Jr.

President

Fire Chiefs' Association of Massachusetts, Inc.

**"United To Face The Future"**



## Fire Prevention Association of Massachusetts, Inc.

P.O. Box 111, South Yarmouth, MA 02664-0111  
 Telephone Number 508-394-7477 ---- FAX 508-394-0106

Established February 1974

Steven P. Edwards, President -- William A. Greene, Jr., Secretary -- Sheldon C. Hamblin, Treasurer

### Building Code Subcommittee Working Group Tasks 8/3/01

- I. Create a Code Coordinating Council at the state level to coordinate codes, and the processes for the promulgation of regulations, licensing, inspections and appeals. Recommend that the Secretary of Administration and Finance will chair this Code Coordinating Council. The Council will also:
  - Address overlapping code promulgating jurisdictions to prevent conflict and duplication.
  - Suggest modifications to existing timeframes for permitting and appeals that logically follow standard building practice.
  - Clearly define roles, expectations and limits of authority of the various boards involved in the permitting process.
  - Establish a guidebook for communities, which present a model protocol to promote the coordination of the building process from permitting, to inspections to issuing certificates of occupancy.

#### Minority Report:

We are in agreement with the need to create a code coordinating council to assist in streamlining the regulatory process. The one key missing in this list of activities and what has been completed to date is the need to look at all codes. The committee is focusing on what is conflicting with the building code. However, with the adoption of a model building code the building code is currently conflicting with many of the specialized codes. These specialized codes were protected by the legislature in 1975 when the State Building Code was first adopted. The legislature mandated that the building code incorporate these specialized codes. Over the years the building code has tried to further regulate in areas overlapping with these codes.

Again, we support the idea, but not the one sided approach currently being taken. As has not been the case with this process, it is important to remain neutral throughout. This process has been slanted to the building code viewpoint. Further, the first several meetings took place with only building officials. It is imperative that this process be open to all fire, electrical, plumbing, etc..

We believe that the approach to this has been negotiated recently and is reflected in the proposed draft legislation creating the code coordinating council, will go a long way in providing an equitable methodology to address these problems.

II. Offer additional training opportunities, and continuing education requirements for local officials and regulators.

- Offer joint training for overlapping topics and topics that are often sources of conflict and confusion.
- Offer separate and specific training for inspectors, promulgation officials, developers, architects, and builders.
- Establish minimum and continued educational requirements for inspector certification.
- Establish a dedicated funding stream.

**Minority Report:**

In looking at the regulations there is nothing more important than the need for training to officials on the regulatory front. The part this is missing is the funding associated with this training. Currently, all the regulatory groups have extremely limited budgets that don't allow for training. In many cases, outside "experts" are the necessary training tool, but there is no funding stream. Fire officials may require an appropriation to cover cost of training as there is no identifiable retained revenue source.

Although we support minimum training and certification requirements, it must be pointed out that the establishment of minimum qualifications for fire officials is protected by statute. This statute specifically gives the Training Council the authority to establish these standards. Further, establishing minimum qualifications for fire officials will force the cities and towns into an unfunded mandate by the state. As such, the state must be aware and willing to provide funds to accomplish this task. This will further be complicated by the fact that there are numerous call/volunteer fire departments that will be adversely affected. As part of this proposal it may be important to review minimum staffing levels for areas and encourage the need to coordinate between towns a minimum staffing level.

- III. Recommended staffing requirements for state regulating agencies and local communities commensurate with housing activity and responsibilities to ensure sufficient resources to process applications and inspections efficiently.  
Recommend a process for continually monitoring manpower requirements for proper code enforcement at the state and local level.

**Minority Report:**

One of the largest aggravations of both the regulated community and the regulators is the lack of support on a statewide level. Both the regulated and regulator need to have adequate manpower and resources to assist in the interpretation of the regulations. This statewide level of assistance is further necessary to allow for a personnel to be on site. This statewide level needs coordination amongst the various state groups. The resources that are necessary are at times of a technical nature. The state needs to provide support to the regulated of a professional and technical nature. The state needs to provide a



Assistance in areas of engineering. This is one of the largest concerns at a local level. Developers tend to bring in all kinds of experts to sometimes intimidate the local officials into believing their position is correct. It must be remembered that these "experts" are paid for by the developers and will attempt to accomplish the developer's needs.

The state also needs to review the hiring and pay process. It is necessary for the state to recruit talented individuals. The state hiring process is extremely cumbersome and also fails to pay for qualified individuals. The state needs to remain competitive in the Commonwealth's market place. Under no circumstances should the critical function of public safety inspection be privatized. This in essence would be having the fox guard the proverbial chicken coop. Public officials serve only one master, the public and the public safety free from the pressures of profit and expediency.

IV. Use current technology to make code compliance and enforcement a more user friendly efficient process.

- Provide every community with equipment and software for computerized permitting and tracking.
- Develop a single website with all the state codes and the capacity to keyword search all of them.
- Develop the capacity at Secretary of State office for electronic public access of information.

**Minority Report:**

We agree with this process.

V. Conduct a review of all local zoning bylaws to identify communities that are using zoning laws to supersede State Building Code.

**Minority Report:**

Although we do not disagree with the general goal of reviewing local by-laws to eliminate unlawful conflict, we suggest a slow and thoughtful approach be taken as the area of preemption is not black and white. There is substantial body of opinion in the legal community for example that would argue that cities and towns have further authority to regulate building conditions either by special permit or through Home Rule Authority. We would suggest legal counsel for BBRS and the specialized codes meet to discuss this issue with the Attorney General's office.



9/26/01

To: Sarah Young  
Linn Torto

From: Michael Kass, Board Counsel

Re: Comments for final report of Barriers Commission Recommendations

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The following comments are on behalf of the Board of Examiners of Electricians, the Board of Examiners of Plumbers and Gas Fitters and the Division of Professional Licensure.

- I. Create a Code Coordinating Council at the state level to coordinate codes, and the processes for the promulgation of regulations, licensing, inspections and appeals. Recommend that the Secretary of Administration and Finance will chair Code Coordinating Council.

The Division and our Boards are in favor of the creation of this Council. We support the make up of the Council as proposed in Linn Torto's 9/12-draft memo. As I stated in comments regarding Linn's memo, The Division and the Boards support the fact that both the Electrical and Plumbing Boards are members of the Council. If either Board were removed from the list of members, the Division and the Boards would withdraw our support of the make up of the Council. The Plumbing Board promulgates and enforces the state Plumbing Code and acts as a forum for appeals from decisions of local plumbing inspectors. The Electrical Board is not only the primary authority for the interpretation of Electrical Code issues, it promulgates regulations (237 CMR) governing the practice of electricians (including permitting and inspection issues), enforces the state Electrical Code through adjudicatory proceedings and serves as the board of Electrical Appeals. The Board of Appeals hears all appeals from decisions made by local electrical inspectors regarding local level code interpretation and enforcement and has the statutory authority to uphold, reverse or revise decisions made by local inspectors of wires. Since the Electrical Board and Plumbing Board are the front line Plumbing and Electrical Code boards, they certainly have the most expertise to make recommendations to eliminate redundancy, minimize inconsistencies and conflicts and maximize the efficiency of the code promulgation process.

The Boards and the Division are concerned that this Council has the potential to become skewed in favor of promulgation that adopts a national "model building code" without recognizing and preserving distinctions in the specialized codes that we feel are crucial to public safety. The specialized codes were protected by the legislature in 1975 when the statewide Building Code was first promulgated. There is a reason that such specialized codes are protected. The plumbing and

electrical industries are independently regulated in order to ensure and maintain public safety. The individual Boards retain the technical expertise to best protect the public from shock, fire, explosion and sanitary hazards. That is why we feel it is so crucial that the Plumbing and Electrical Boards remain on this Council. Additionally, the Division and the Boards applaud the fact that Secretary of A & F is the Chairman with "exclusive responsibility for the conduct of the Council." Having A & F head up the Council as opposed to any particular promulgating agency allows each contributing code agency to contribute its full level of expertise and insight and eliminates the fear that any one agency is attempting to control or "take over." A & F is not only a "neutral" player in the Code playing field - A & F has the authority to allocate resources where needed.

II. Offer additional training opportunities and continuing education requirements for local officials and regulators.

The Division and the Boards very much support this recommendation including joint training on overlapping topics; separate and specific specialized training, establishment of minimum continuing ed. requirements for inspector certification and the establishment of a dedicated funding stream.

Recent legislation went into effect with the support of the Plumbing Board requiring mandatory continuing education for plumbing inspectors. The Electrical Board requires con. ed. for all electricians and supports proposed legislation requiring inspector certification.

The Division and the Boards recognize that local plumbing and electrical inspectors are the front line of defense for citizens and consumers to protect them from safety and health hazards, incompetence and fraud. We support all efforts to enhance the knowledge and professionalism of local inspectors.

III. Recommend staffing requirements for state regulating agencies and local communities commensurate with housing activity and responsibilities to ensure sufficient resources to process applications and inspections efficiently. Recommend a process for continually monitoring manpower requirements for proper code enforcement at the state and local level.

The Division and the Boards are in favor of any effort to increase inspectional resources. We strongly believe additional resources are greatly needed at the state level in order to allow the Division and the Boards to better serve the public and better serve the local inspectional community. Local inspectors turn to our boards on a daily basis seeking technical, code interpretation, investigative and enforcement assistance. Our resources are stretched extremely thin. Each board currently has only two inspectors and very limited staff to cover inspectional, code enforcement and licensing issues that arise statewide. This being said, it must also be stressed that the Boards are extremely opposed to any efforts being



made to privatize state and local inspectional functions. Plumbing and Electrical inspections are a critical function of public safety. Such a public safety enforcement role is one of the main missions of government. The Boards feel it would be extremely careless and dangerous and lead to conflicts of interest to entrust such a vital function of government to the profit driven private sector.

IV. Use current technology to make code compliance and enforcement a more user-friendly efficient process.

We are very much in favor of providing every community with equipment and software for unified computerized permitting and tracking and the development of unified websites. We also feel very strongly that it would help improve efficiency of code and regulation promulgation, compliance and enforcement to develop the capacity at the secretary of State's office for electronic public access of information including all related regulations and their promulgation process.

V. Conduct a review of all local zoning bylaws to identify communities that are using zoning laws to supersede State Building Code.

We believe gathering data is good idea. However, we also believe that the analysis of such data will require in depth legal review. The laws concerning zoning and local verses state authority are complex at best. Legal analysis of such data and recommendations from the analysis should probably be tasked to a group consisting of the attorneys from the various code agencies and representatives from the Attorney General's Office and the MMA.